

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 10068 of 2007(W)

PETITIONER:

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1. LALI KUNJUMON, AGED 39 YEARS, W/O.
KUNJUMON, KALLUTHUNDATHIL KADIKA, KAITHAPRAMBU,
ADOOR.
 2. SUJATHA S, AGED 42 YEARS,
W/O. MADHUSUDHANAN NAIR, KULANGARA AZHIKATHUPUTHEN
VEEDU, ENATHU VILLAGE, ELEMANGALAM MURI.
 3. LISSIE MATHEW, AGED 38 YEARS,
W/O. MATHAI KUTTY V, CHARUVILA PUTHEN VEEDU,
ELEMANGALAM VILLAGE, ARUKALIKKAL PADINJARU MURI.
 4. ROSAMMA RAJU, W/O. S. RAJU, ROHAN VILLA,
EZHAMKULAM VILLAGE, ADOOR.

BY ADV. SRI. V. PHILIP MATHEW

RESPONDENTS:

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1. EZHAMKULAM GRAMA PANCHAYAT, REPRESENTED
BY ITS SECRETARY, PARAKODE P.O ADOOR.
 2. RETURNING OFFICER, KUDUMBASHREE CDS,
EZHAMKULAM GRAMA PANCHAYAT.
 3. KUDUMBASHREE CDS, EZHAMKULAM GRAMA
PANCHAYAT, REPRESENTED BY CHARGE OFFICER,
PARAKODE P.O, ADOOR.
 4. DISTRICT COLLECTOR, PATHANAMTHITTA.
 5. STATE OF KERALA REPRESENTED BY ITS
SECRETARY, DEPARTMENT OF LOCAL ADMINISTRATION,
KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI. K. SHAJ
SRI. B. BALRAJ
SRI. SAJJU. S
GOVT. PLEADER SRI. P. K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

PETITIONER'S EXHIBITS

- EXT.P1 COPY OF THE REPRESENTATION SUBMITTED BY LISSY MATHEW
- EXT.P2 COPY OF THE REPRESENTATION SUBMITTED BY ROSAMMA RAJU
- EXT.P3 COPY OF THE REPRESENTATION SUBMITTED BY SARASAMMA
- EXT.P4 COPY OF THE REPRESENTATION DTD. 29-01-07
- EXT.P5 COPY OF THE REPRESENTATION SUBMITTED BY 2ND PETITIONER TO THE RETURNING OFFICER ON 15-3-07
- EXT.P6 COPY OF THE REPRESENTATION SUBMITTED BY 3RD PETITIONER TO THE RETURNING OFFICER ON 15-03-2007
- EXT.P7 COPY OF THE REPRESENTATION SUBMITTED BY 4TH PETITIONER TO THE RETURNING OFFICER ON 15-03-2007
- EXT.P8 COPY OF THE MEMORANDUM OF ASSOCIATION OF R3 ATTESTED BY THE DISTRICT REGISTRAR GENERAL, PATHANAMTHITTA
- EXT.P9 COPY OF THE MINUTES DTD. 28-01-07 SIGNED BY WARD MEMBER.
- EXT.P10 COPY OF THE ORIGINAL MINUTES BOOK OF THE ADS OF WARD NO.10
- EXT.P11 COPY OF THE LIST CONTAINING NAMES OF PERSONS WHOSE NOMINATIONS WERE ACCEPTED PUBLISHED BY HEALTH INSPECTOR OF EZHAMKULAM PHC ON BEHALF OF THE MEDICAL OFFICER (RETURNING OFFICER).

RESPONDENT'S EXHIBITS

- EXT.R1(A) TRUE COPY OF MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION OF A KUDUMBASHREE COMMUNITY DEVELOPMENT SOCIETY.
- EXT.R1(B) TRUE COPY OF THE RESOLUTION NO.III (20) DTD. 16-12-06 OF EZHAMKULAM GRAMA PANCHAYATH
- EXT.R1(C) TRUE COPY OF THE NOTICE NO.CDSE 1/2007 DTD. 1-1-07 ISSUED BY R2
- EXT.R1(D) TRUE COPY OF THE MINUTES ETC PERTAINING TO EACH OF THE 19 WARDS OF R1
- EXT.R1(E) TRUE COPY OF THE LIST OF SEVEN MEMBERS EACH FROM EACH WARD SUBMITTED BY THE CDS CHARGE OFFICER TO THE RETURNING OFFICER.
- EXT.R1(F) TRUE COPY OF THE ELECTION NOTIFICATION ISSUED BY R2
- EXT.R1(G) TRUE COPY OF THE PUBLICATION OF EXT.R1(F)
- EXT.R1(H) TRUE COPY OF THE DRAFT VOTER LIST PUBLISHED ON 12-03-2007 BY R2
- EXT.R1(I) TRUE COPY OF THE OBJECTIONS REGARDING CERTAIN CLERICAL MISTAKES

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EXT.R1(J)	TRUE COPY OF THE PUBLICATION OF FINAL VOTER LIST OF R2 RETURNING OFFICER EVIDENCING THE PUBLICATION.
EXT.R1(K)	TRUE COPY OF THE DECLARATION OF ELECTION DTD. 23-03-07
EXT.R1(K)	TRUE COPY OF EXTRACTS OF THE MINUTES BOOK OF THE SAID MEETING DTD. 23-03-07
EXT.R1(L)	TRUE COPY OF EXTRACTS OF THE MINUTES BOOK OF THE SAID MEETING DTD. 23-03-07
EXT.R1(M)	THE LETTER OF THE DISTRICT MISSION CO-ORDINATOR KUDUMBASHREE PATHANAMTHITTA
EXT.R1(N)	TRUE COPY OF VOTERS LIST OF WARD NO. 16 OF EZHAMKULAM GRAMA PANCHAYAT.

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).No. 10068 OF 2007

Dated this the 7th day of August, 2007

JUDGMENT

Petitioners have approached this court with the following prayers:

" Issue a writ of mandamus or other appropriate writ, order or direction commanding respondents to publish a proper and fair voters list containing the names of all persons eligible to participate in the ADS and CDS elections and to conduct a fresh election with sufficient opportunity to voters to contest the elections and participate in the election process.

Issue a writ of mandamus or other appropriate writ, order or direction commanding respondents not to conduct the elections proposed to be held on 26/03/2007 and to conduct elections immediately thereafter by publishing a proper voters list and giving sufficient opportunity to all eligible members of kudumbhashree ADS and CDS in Ezhamkulam Grama Panchayat to participate in the election process.

Case of the petitioners in brief is as follows:

Petitioners are members of Kudumbashree units under the Ezhamkulam Grama Panchayat. The term of the office of the existing committee and officer bearers of CDS Ezhamkulam Grama Panchayat is to expire in April 2007. Third respondent is a society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.

Complaint of the petitioners is as follows:

The election is to be held for electing office bearers of CDS from among the members of the ADS known as common assembly in accordance with the Memorandum of Association and Articles of Association. Even members included in the voters list like the first petitioner have not been properly informed about the elections. There is no proper voters list. There is no proper election notification. No elections were held for electing office bearers of the ADS. A notice dated 12/03/2007 regarding election was pasted on the wall of the Panchayat office on 15/03/2007 violating clause 12 of the bye-laws of the third respondent. Most of the voters are not members of the BPL (below poverty line). The second respondent- returning officer is

only a tool in the hands of local political leaders of the ruling front. It is also stated that even nomination papers were not issued to several intending candidates and only 9 nomination papers were issued to persons of her choice. Petitioners submitted Exts.P1 to P3 and thereafter Ext.P4 and also Exs.P5 to P7 representations.

2. Counter affidavit is filed initially by the first respondent-Panchayat producing various documents and thereafter by the second respondent- Returning Officer. Petitioners have filed reply affidavit also. In the counter affidavit it is interalia stated that the election process was stated in the month of December 2006 itself. Various steps were taken, it is stated.

3. I heard learned counsel for the petitioner and also the learned counsel appearing for respondents 1 and 2.

4. Learned counsel for the petitioner would infact rely on the decision reported in **Mathew v. Nadukkara Agro Processing Co.Ltd.** (2001(2)KLT 729). That was a case where this court took note of the obligation on the part of the company under Section 166 of the Companies Act to convene the first

annual general body meeting and directed the convening of the general body meeting. That was a case where the company was vested with a statutory duty to convene a meeting. Learned counsel for the petitioner also relied on the decision reported in **Mathai v. State Co-operative Election Commission** (2007(2) KLT 789). That was a case where this court had considered the case under the Co-operative Societies Act. Elections were to be held on the basis of wards. The question arose as to whether it is open to the members of the committee to delimit the ward or the power is vested in the general body of the Co-operative society. This court took note that in election matters the court would not ordinarily interfere under Article 226 of the Constitution. This court took note of the decision of the Apex court in this regard. The court also took note of the fact that in appropriate cases, this court can interfere. The court found that the power to delimit is vested with the general body and no power is vested with the committee. This court ofcourse also considered the question as to whether the writ petition is maintainable in view of the fact that election in respect of Co-operative Society and also whether the court should interfere after the process has started . The

court took note of the fact that election was being proceeded with on the basis of palpable illegality namely decision was not taken by the competent authority namely the general body of the Society fixing the ward and interfered in the matter. Learned counsel for the petitioner also relied on the decision reported in **Ajay Hasia v. Khalid Mujib Sehravardi and others** (1981 Supreme Court 487). In that case the question was whether society was an authority under Article 12 of the constitution.

5. It is to be noted that this is not a case where the society in question is a statutory body. It is true that the society is registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and the election in respect of office bearers of CDS is to be held in terms of byelaws. No doubt, learned counsel for the petitioner points out the functions in question. The functions which are being discharged through the Society are public functions of great importance as micro credit is being given and construction of house is being done through society, it is submitted. There is no specific averment in the writ petition that society is a authority under Article 12 of the Constitution. It is to be noted that this is a case

where the state of pleadings would show that on the one hand the case of the petitioner is that the bye-laws are violated. On the other hand with the averments and documents produced along with counter affidavit respondents attempt to show that election was infact conducted in accordance with the bye-laws. No doubt, there is a case that the documents produced are forged. The petitioner has not sought to challenge the election as such.

In the nature of the pleadings and the nature of the documents produced, I would think that this is not a case where this court should consider the matter under Article 226 of the Constitution and I feel that petitioners are to be relegated to approach the appropriate forum by way of filing civil suit and it is open to the petitioners to seek interim relief also in the matter. The writ petition is disposed of as above.

(K.M.JOSEPH, JUDGE)

SV.

